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Supreme Court of the United States

October Term, 1944

No. 202

LANDIS MACHINE COMPANY,

Petitioner,

v.

CHASO TOOL COMPANY, INC.,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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No. 202

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I.

The Opinions of the Courts Below.

The opinion of the Sixth Circuit Court of Appeals is reported at 141 Fed. (2d) 800 (61 U. S. P. Q. 164) and appears at pages 4251-59 of the record. No opinion was written by the District Court but its Findings of Fact and Conclusions of Law appear at pages 4148 to 4204 of the record and are reported at 53 U. S. P. Q. 200.

II.

Jurisdiction.

(1) The jurisdiction of this Honorable Court is based upon Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, 28 U. S. Code, Section 347.

(2) The petition involves two equity suits arising under the patent laws of the United States and the Circuit Court of Appeals for the Sixth Circuit affirmed the lower court's decree dismissing the bills of complaint and enjoining the petitioner from misuse of its patents in violation of the Clayton Act of October 15, 1914, c. 323, Sec. 3, 38 Stat. 731 (R. 4250, 4251). Although this Honorable Court has jurisdiction in this case and the exercise of this jurisdiction rests within the discretion of this Court, nevertheless there is no need for the exercise of this jurisdiction because the Circuit Court of Appeals for the Sixth Circuit in its rulings followed rules established by a long line of decisions of this Court and the lower Federal courts as pointed out below.

III.

Statement of the Case.

The patents in suit relate to die heads for cutting external threads. The dies which cut the threads are known as chasers. The chasers are held in a die head tangential to the work being threaded and therefore are known as tangential chasers. All of the patents in suit include the chaser as an element in combination with the die head.

None of the patents in suit claim the chaser per se (Finding 231, R. 4185, 171, 644, 645). The tangent chaser per se is old (R. 664). Petitioner did not originate the tangent type chaser and die head (Finding 32, R. 4151). Petitioner's patents covering the chaser per se expired before respondent entered the tangent chaser business (Finding 3, R. 4148, Finding 231, R. 4185). Respondent manufactures and sells tangent chasers for use in die heads purchased from the petitioner. The chasers are a perishable and expendable element which are short-lived in comparison with the life of the die head. The tangential chasers in the die head and chaser combinations shown in the prior patented art perform identically the same functions as the tangential chasers covered by the patents in suit (R. 655, 657, 439, 1660). All of the improvements covered by petitioner's patents have been made either in the chaser holders or in the die head (R. 171, 644, 645).

IV.

Summary of Argument.

Point I. The thread cutting chasers here involved are relatively short-lived and are frequently replaced during the normal life of the die head in which they are held. The right of the purchaser of a patented combination to replace elements which are short-lived in comparison to the life of the combination as a whole is well established by a long line of decisions:

Wilson v. Simpson, 9 How. 109, 50 U. S. 109, 13 Law Ed. 66;

Morgan Envelope Company v. Albany Perforated Wrapper Paper Company, 152 U. S. 425, 38 Law Ed. 500;

Theodore A. Heyer v. Duplicator Manufacturing Company, 263 U. S. 100, 44 S. Ct. 31, 68 Law Ed. 189;

Payne v. Dickinson, 109 Fed. (2d) 52 (C. C. A. 3), certiorari denied 84 Law Ed. 1406;

American Safety Razor Corp. v. Frings Bros. Co., 62 Fed. (2d) 416 (C. C. A. 3), certiorari denied 53 S. Ct. 524, 77 Law Ed. 1476;

Harris Calorific Co. v. Marra, 95 Fed. (2d) 870 (C. C. A. 3);

Autographic Register Co. v. Sturgis Register Co. et al. and *Sturgis Register Co. et al. v. Autographic Register Co.*, 110 Fed. (2d) 883 (C. C. A. 6), 73 Fed. (2d) 883 (C. C. A. 6);

Electric Auto-Lite Co. v. P. & D. Mfg. Co., Inc., et al., 78 Fed. (2d) 700 (C. C. A. 2);

General Motors Corporation v. Preferred Electric & Wire Corp., 79 Fed. (2d) 621 (C. C. A. 2);

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Gillette Safety Razor Co. v. Standard Safety Razor Co., 64 Fed. (2d) 6 (C. C. A. 2);

Gillette Safety Razor Co. v. Hawley Hardware Co., 60 Fed. (2d) 1019 (D. C., D. Conn.).

Point II. The petitioner cannot defeat the rule established by *Wilson v. Simpson*, supra, and the other decisions cited under Point I, by attaching patent and license notices to its chasers and die heads which have as their sole purpose to force owners of the patented die heads to purchase all of their chasers and repair parts from the petitioner.

Motion Picture Patents Company v. Universal Film Manufacturing Company, et al., 243 U. S. 502-521, 61 Law Ed. 871;

Carbice Corporation of America v. American Patents Development Corporation and Dry Ice Corporation of America, 283 U. S. 27-35, 75 Law Ed. 819;

Leitch Manufacturing Company v. Barber Company, 302 U. S. 458-463, 82 Law Ed. 371;

B. B. Chemical Co. v. Ellis, et al., 314 U. S. 495-498, 86 Law Ed. 367 (52 U. S. P. Q. 33);

Morton Salt Company v. The G. S. Suppiger Company, 314 U. S. 488-494, 86 Law Ed. 363 (52 U. S. P. Q. 30);

J. C. Ferguson Mfg. Works, Inc. v. American Lecithin Co., 94 Fed. (2d) 729 (C. C. A. 1);

Autographic Register Co. v. Sturgis Register Co., et al. and *Sturgis Register Co., et al. v. Autographic Register Co.*, 110 Fed. (2d) 883 (C. C. A. 6);

American Lecithin Co. v. Warfield Co., Warfield Co. v. American Lecithin Co., 105 Fed. (2d) 207 (C. C. A. 7);

Barber Asphalt Corporation et al. v. LaFera Grecco Contracting Co., et al., 116 Fed. (2d) 211 (C. C. A. 3);

Dehydrators, Ltd., et al. v. Petrolite Corporation, Ltd., 117 Fed. (2d) 183 (C. C. A. 9);

Philad Co. v. Lechler Laboratories, Inc., 107 Fed. (2d) 747 (C. C. A. 2);

Novadel-Agene Corporation v. Penn, et al., 119 Fed. (2d) 764 (C. C. A. 5);

Barber Colman Company v. The National Tool Company, 136 Fed. (2d) 339 (58 U. S. P. Q. 2) (C. C. A. 6);

The National Lock Washer Company v. George K. Garrett Company, Inc., 137 Fed. (2d) 255 (58 U. S. P. Q. 460) (C. C. A. 3).

Point III. Petitioner should be denied relief because it has without authority of law attempted to extend its monopoly to cover the unpatented and expendable chaser by notice accompanying its die heads, chasers and invoices.

Motion Picture Patents Company v. Universal Film Manufacturing Company, et al., 243 U. S. 502-521, 61 Law Ed. 871;

Carbice Corporation of America v. American Patents Development Corporation and Dry Ice Corporation of America, 283 U. S. 27-35, 75 Law Ed. 819;

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B. B. Chemical Co. v. Ellis, et al., 314 U. S. 495-498, 86 Law Ed. 367 (52 U. S. P. Q. 33);

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The National Lock Washer Company v. George K. Garrett Company, Inc., 137 Fed. (2d) 255 (58 U. S. P. Q. 460) (C. C. A. 3);

Mercoid Corporation v. Mid-Continent Investment Company, et al., 320 U. S. 661, 88 Law Ed. 262, 64 S. Ct. 268 (60 U. S. P. Q. 21);

Mercoid Corporation v. Minneapolis-Honeywell Regulator Company, et al., 88 Law Ed. 273 (60 U. S. P. Q. 30).

Point IV. There is no need for this Court to consider the full implications of its rulings in the *Mercoid Corporation v. Mid-Continent Investment Company*, 320 U. S. 661, 88 Law Ed. 262, 60 U. S. P. Q. 21, because the Court of Appeals for the Sixth Circuit specifically avoided resting its decision on the *Mercoid* cases and relied instead upon the rules enunciated in *Wilson v. Simpson*, supra, and *Carbice Corporation of America v. American Patents Development Corporation and Dry Ice Corporation of America*, supra.

Point V. Petitioner violates the Clayton Act, Title 15 U. S. C. A. § 14, because it sells its die heads on the condition that the purchaser buy all its chasers for use in said die heads from petitioner and petitioner sells chasers on the condition that the purchaser buy all its die heads for use with such chasers from petitioner.

International Business Machines Corporation v. United States of America, 298 U. S. 131-140, 80 Law Ed. 1085;

United Shoe Machinery Corp. v. United States, 258 U. S. 451, 42 S. Ct. 363, 66 Law Ed. 708;
Oxford Varnish Corporation et al. v. Ault & Wiborg Corp., 83 Fed. (2d) 764 (C. C. A. 6);
Radio Corporation of America v. Lord, 28 Fed. (2d) 257 (C. C. A. 3).

Point VI. The patents in suit are void because they cover an old and exhausted combination of chaser and die head or chaser and holder.

Bassick Manufacturing Company v. R. M. Hollingshead Company and *G. S. Rogers et al. v. Alemite Corporation*, 298 U. S. 415-426, 80 Law Ed. 1251;
Lincoln Engineering Company of Illinois v. Stewart-Warner Corp., 303 U. S. 545-552, 82 Law Ed. 1008;
Carlton v. Bokee, 17 Wall. 463-473, 21 Law Ed. 517;
Fruehauf Trailer Co. v. Highway Trailer Co., 54 Fed. (2d) 691 (D. C., E. D. Mich., S. D.);
The Williams Manufacturing Company v. United Shoe Machinery Corp., 121 Fed. (2d) 273 (C. C. A. 6), 316 U. S. 364-394, 86 Law Ed. 1537;
In re Allatt, 121 Fed (2d) 545 (C. C. P. A.);
In re Maybach, 107 Fed. (2d) 610.

V.

ARGUMENT.

Point I. Bearing in mind that the actual cutting of the thread is done entirely by the chaser, ordinary horse-sense tells one that the chaser, like any other cutting tool, is bound to wear out long before the die head. Kirkpatrick, vice-president and general manager of the petitioner company, testified that die heads and holders

> "consume from 50 to 250 sets of chasers during their normal life * * *." (R. 91).

Since each set comprises four or more chasers, this means that a die head would consume from 200 to 1000 chasers during its normal life. The record is replete with testimony by petitioners own experts and others which incontrovertibly shows that the chasers are consumable elements which perish long before the normal life of the die head (R. 827, 1478, 1773, 1774, 1846, 826, 1617, 2587, 2588, 2593, 2594). In fact, large corporations like Chrysler Motor Company and General Motors Corporation in their tool-costs department classify thread cutting chasers, like all cutting tools, as perishable tools and classify the die head as an asset (R. 1852, 1854-5). The colloquy between the Honorable District Court and the petitioner's general manager (R. 1385, 1386) clearly shows that petitioners entire business practice is founded upon the fact that the chaser is a perishable element and that a die head will consume large numbers of chasers in its life time of use. Since the die head serves as a tool chuck for holding the thread cutting tool or chaser, the question here presented is: May the owner of a patent covering a tool chuck and tool monopolize the manufacture and sale of all tools used in that chuck?

At the outset it is well to note that the Circuit Court of Appeals did not rest its decision upon the recent case of *Mercoid Corporation v. Mid-Continent Investment Company,* 320 U. S. 661, 88 Law Ed. 262 (R. 4252) but rested its decision squarely upon the rule enunciated in *Wilson v. Simpson,* supra, and the long line of decisions cited in the summary following the rule of this leading case (R. 4255). The Court of Appeals stated:

> "The chaser is a cutting tool, and while from time to time its effectiveness may be renewed by grinding and sharpening, it would seem inescapable that it is an expendable element of the patented combination, and so under the rule of the cited cases, being itself unprotected by existing patents, may not be brought within patent protection." (R. 4255).

The tangent chasers which respondent sells to the purchasers of the patented die heads are expendable elements which are the exact counterpart of the cutting knives of the patented wood planing machine in *Wilson v. Simpson,* supra, of the gelatine bands in the patented duplicating machine, *Heyer v. Duplicator Manufacturing Company,* supra, the toilet paper roll in the patented toilet paper and dispensing fixture combination of *Morgan Envelope Co. v. Albany Perforated Wrapper Paper Co.,* supra, and of the solidified carbon dioxide refrigerant in the patented refrigerated package in the case of *Carbice Corporation of America v. American Patent Development Corporation and Dry Ice Corporation of America,* supra. It is submitted that the Court of Appeals properly affirmed the District Judge's holding that the respondent lawfully sold chasers for use in die heads of petitioner's manufacture.

Point II. Petitioner seeks to avoid the rule of *Wilson v. Simpson,* supra, by attaching license and patent notices to

its die heads, chasers and chaser holders (R. 4194, 4193, 4195). The import of these notices is that a license to use petitioner's die heads for thread cutting can only be obtained by purchasing the expendable chasers from petitioner and that such license exists only for the life of the chasers. If petitioner could avoid the rule of *Wilson v. Simpson*, supra, and related cases by such patent notices, it would successfully circumvent the salutary rule denying relief to a patentee who unlawfully misuses his patents enunciated by this Honorable Court in a long line of decisions cited supra in the summary under Point II. These decisions clearly condemn petitioner's attempt by patent notices to circumvent the rule of *Wilson v. Simpson* and unduly prolong its patent monopoly.

Point III. Petitioner sells its die heads at a price bearing no relation to cost (R. 1588). Petitioner sells its die heads below cost and depends upon its chaser sales alone to make a profit and recoup the losses on the die head sales (R. 1385, 1386). Petitioner, in view of its business practice above specified, is naturally loathe to give up its monopoly on the tangent chasers and accordingly has attempted, contrary to law, to use its patents as though they still covered the chasers per se. Petitioner has attached patent notices to its die heads and chasers which inevitably lead the purchasers of the die heads to believe that they are compelled to purchase all the chasers used in these die heads from petitioner (R. 4193, 4194, 4195). By a long line of decisions this Honorable Court has denied relief to patentees that so misuse their patents.

Motion Picture Patents Company v. Universal Film Manufacturing Company et al., 243 U. S. 502-521, 61 Law Ed. 871;

Carbice Corporation of America v. American Patents Development Corporation and Dry Ice Corporation of America, 283 U. S. 27-35, 75 Law Ed. 819;

Leitch Manufacturing Company v. Barber Company, 302 U. S. 458-463, 82 Law Ed. 371;

B. B. Chemical Co. v. Ellis et al., 314 U. S. 495-498, 86 Law Ed. 367 (52 U. S. P. Q. 33);

Morton Salt Company v. The G. S. Suppiger Company, 314 U. S. 488-494, 86 Law Ed. 363 (52 U. S. P. Q. 30);

J. C. Ferguson Mfg. Works, Inc. v. American Lecithin Co., 94 Fed. (2d) 729 (C. C. A. 1);

Autographic Register Co. v. Sturgis Register Co., et al. and *Sturgis Register Co., et al. v. Autographic Register Co.*, 110 Fed. (2d) 883 (C. C. A. 6);

American Lecithin Co. v. Warfield Co., Warfield Co. v. American Lecithin Co., 105 Fed. (2d) 207 (C. C. A. 7);

and cases cited under Point III. In view of these decisions it is believed that the Circuit Court of Appeals ruled correctly in affirming the District Court's decision denying relief to petitioner because of its unlawful misuse of its patents.

Point IV. Since the Circuit Court of Appeals and the District Court based their decisions squarely upon (1) the rule enunciated in *Wilson v. Simpson*, supra, relating to the lawful replacement of a perishable element of a patented combination (R. 4255) and (2) the rule enunciated in the *Carbice* and *Leitch cases*, supra, denying relief to a patentee who unlawfully misuses his patent (R. 4255, 4252), there is no need for this Honorable Court, insofar as this case is concerned, to clarify the holding in *Mercoid*

Corporation v. Mid-Continent Investment Company, supra, even were such clarification desirable.

Point V. Petitioner sells its chasers on condition that the purchaser also buy petitioner's die heads for use with the chasers and sells its die heads on the condition that the purchaser also buy petitioner's chasers (R. 4191-4196, Petitioner's Exhibits 79-82). Even though petitioner does not say so in so many words, this is the plain intention of its notice system and falls within the condemnation of the *International Business Machines Corporation v. United States of America*, 298 U. S. 131-140, 80 Law Ed. 1085, wherein the defendant merely made its lease terminable if the lessee used cards purchased from a source other than the lessor.

The Clayton Act expressly forbids tying the sale of goods "whether patented or unpatented." Petitioner's whole economic theory upon which it bases its business practices, drives petitioner inevitably into a violation of the Clayton Act. The sale of the die head is the thing, regardless of cost, but to avoid a loss and make a profit, petitioner must obtain the sale of the chasers used in its die heads. Hence, the tying of die head and chaser sales in violation of the Clayton Act. Except for respondent's meager sales, petitioner has a monopoly in sale of the unpatented Landis type tangent chasers (R. 1413, 4137, 4138, 4190, Finding 276). It is submitted that the Court of Appeals correctly affirmed the District Court's holding that petitioner's business practices violated the Clayton Act.

Point VI. Since the combination of chaser and die head was old long prior to any of the patents in suit, and since all of the improvements have been in the die head itself and not in the chaser (R. 171, 644, 664, 2638-9, 655, 657,

439, 1660, 653) it is submitted that by including the chaser as an element in this old combination petitioner's patents are void in view of the rule enunciated in *Bassick Manufacturing Co. v. R. M. Hollingshead Co.*, 298 U. S. 415-426, 80 Law Ed. 1251 and the related cases cited under Point VI in the summary.

Petitioner by including the chaser in this old and exhausted combination has sought to extend its monopoly to the unpatented chaser. Since petitioner sells its die heads at a loss and depends upon the profits from its chaser sales to offset this loss and to obtain a net profit on its over all business, petitioner's motive in so attempting to extend its patent monopoly to the unpatented chaser is clearly evident. This renders petitioner's patents void in view of the holding in this Honorable Court in the *Lincoln Engineering Company v. Stewart-Warner*, supra, wherein Justice Roberts stated at page 1012:

> "We conclude that Butler's effort, by the use of a combination claim, to extend the monopoly of his invention of an improved form of chuck or coupler to old parts or elements having no new function when operated in connection with the coupler renders the claim void."

CONCLUSION.

It is therefore believed that in view of the well established authority upon which the Circuit Court of Appeals and the District Court relied in deciding this case there is no need for this Honorable Court to exercise its supervisory powers and that therefore this petition should be denied.

Respectfully submitted,

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